UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 520, AFL-CIO
(Various Employers in Southwestern Illinois)

and Case 14–CB–8659

THOMAS C. GLENN, an, Individual

Paula B. Givens, Esq., of St. Louis,
Missouri, for the General Counsel.

Thomas C. Glenn, of O'Fallon,
Illinois, *pro se.*

Harold Gruenberg, Esq., of St. Louis,
Missouri, for the Respondent.

DECISION

Statement of the Case

JAMES L. ROSE, Administrative Law Judge: This matter was tried before me on May 5, 1997, at St. Louis, Missouri, upon the General Counsel's complaint which alleged that in several respects the Respondent denied the Charging Party hiring hall information to which he was entitled thus violating Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.* The Respondent denied that it committed any violations of the Act.

Upon the record as a whole,[1] including my observation of the witnesses, a brief from Counsel for the General Counsel and arguments of counsel I hereby make the following findings of fact, conclusions of law and recommended order:

---

[1] Counsel for the Respondent moved to amend the transcript of his cross examination of the Charging Party to add at page 67 following line 25:

Q. (By Mr. Gruenberg). Is that statement true? (The charge allegation in Case 14-CB-7030 that the Respondent had failed to properly refer the Charging Party and others.)

A. It's false.

Continued

I. JURISDICTION

At all times material, Lane Construction Company, Inc., has been a Missouri corporation engaged in the construction industry at sites in Missouri and southwestern Illinois, in connection with which it annually performs services valued in excess of $50,000 in states other than Missouri. Similarly, at all times material, McCarthy Brothers Construction Company, Inc., has been a Missouri corporation engaged in the construction industry at sites in Missouri and southwestern Illinois, in connection with which it annually performs services in states other than Missouri valued in excess of $50,000.

At all material times, the Respondent has maintained a collective bargaining relationship with the above and other construction companies, whereby the Respondent is the exclusive source of referral of employees within its geographical jurisdiction.

At all material times, Lane and McCarthy have been employers engaged in interstate commerce within the meaning of Sections 2(2), 2(6) and 2(7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union of Operating Engineers, Local 520, AFL-CIO (herein the Respondent or the Union) is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts.

The Respondent has collective bargaining agreements covering about 300 construction industry employers doing business in southwestern Illinois. It operates an exclusive hiring hall

---

Q. I show you the charge in the instant case, 14-CB-8659, General Counsel's Exhibit 1(a) and ask whether the statement in the charge, that since January 23, 1996 Local 520 has discriminated against Thomas C. Glenn, is true.

A. It's false.

In his motion, Counsel represented that on contacting the reporting service he was informed that the original tape no longer exists, but the backup tape "contains a gap in the testimony reported at page 67 between lines 24 and 25." Counsel for the General Counsel objected, representing that on hearing the backup she found an ordinary pause, but no gap and that her notes reflect no such questions and answers.

I conclude that the Respondent's motion should be denied. My notes reflect the Charging Party's admission reported on line 13 of page 67 that the allegations in an Illinois Department on Human Rights charge were false, but not the admissions proffered by the Respondent's motion. Further, the interrogation preceeding line 25 relates to Case 14-CB-7030 as does the exhibit referred to by Mr. Gruenberg beginning on line 25. It would not seem likely that Counsel would interrupt his examination about Case 14-CB-7030 to insert a question concerning Case 14-CB-8659. I further reject Counsel's alternative motion to strike the General Counsel's brief.

for its members, as well as nonmembers, such as the Charging Party, who choose to pay the $65 per quarter referral fee.

In the Respondent's system, each of the 1700 or so individuals available for referral is given a number in the order that individual is entered into the system. That number, along with the individual's name, address, telephone number and job qualifications are entered on an automatic telephone card and the telephone number is punched in. The cards for out of work applicants for referral are placed in a rack in numerical order, and when an order is received, are called based on the lowest number first. The cards of working members are placed in a second rack in alphabetical order. Thus, as testified to by witnesses for the Respondent, there is no referral list as such, notwithstanding that the collective bargaining agreement and referral rules use the word "list."

The Respondent also keeps a designation of minority applicants, such as the Charging Party, pursuant to compliance with some kind of a equal employment opportunity order. When a contractor calls specifically for a minority, the Respondent will refer from minority group, again based on the lowest number first. However, the minority members will also be referred generally when their respective numbers come up.

From 1970 to 1990 Glenn had been a member of the Respondent. Subsequently he has been registered for referral and has paid the $65 quarterly fee. Notwithstanding that the Respondent's records show that Glenn declined referrals on July 1, 1996, [2] and July 9, Glenn concluded that he had not been referred to jobs as he should have been. Thus on August 7, he went to the Respondent's office "to see how many was ahead of me on the referral list." This was two weeks after he filed the original charge in this case, a copy of which was served on the Respondent by regular mail on July 24. This charge alleged that since January 23, the Respondent "has caused and/or attempted to cause various employers to discriminate against Thomas C. Glenn by disparaging his qualifications and has failed to properly refer Thomas C. Glenn for reasons violative of the Act."

Glenn testified that he told Douglas James, the Respondent's Business Manager and Chief Executive Officer, that he would like to see "who is ahead of me on the minority list. I want to see their names and their seniority numbers." And, he testified, that he also wanted to see "today's list where they sent people out today. . . ." Glenn testified that James said he could not give that information because it would be "an invasion of their privacy, their numbers." But James told his assistant, Daniel Gruber, "take him across the hall and let him look at the names of the referrals ahead of him but don't let him see the seniority number and don't let him copy anything down. And he said, Thomas -- I mean, referring to me, he said, if you want to come and review any more records, then you will have to put your request in writing."

Glenn testified that Gruber showed him the cards of the nonworking minorities ahead of him, but kept his thumb over the seniority number on the card. This assertion was denied by Gruber, and not accurate even from Glenn's testimony, since he also testified that he saw number 790 on the first card.

James denied telling Glenn he could not have any of the information requested, but he did testify that as to the telephone numbers of registrants, he would have to check with the attorney, since many members did not want their telephone numbers released.

[2] All dates hereafter are in 1996, unless otherwise indicated.

Glenn then went to the Board's Regional Office, and reported what had happened to Christal Gulick, the field attorney assigned to investigate his charge. There he was given language to include in a letter to the Respondent requesting additional information. Glenn wrote this request by hand, and delivered it to the Respondent's office on August 9. On August 15, Glenn returned to the Respondent's office and again asked to see who was ahead of him on the referral list. Glenn testified that James refused this request, saying that he could not see the names and seniority numbers of others, that if he showed this to Glenn he would have to show it to everybody and that Glenn would need an appointment to see the list. Thus, according to Glenn, James gave him a letter stating that the information he requested would be made available on August 22.

On August 22 Glenn again went to the Respondent's office, along with attorney Gulick and there met with James, Gruber and the Respondent's attorney. During the course of this meeting, counsel for the Respondent stated that Glenn's request to copy records of all referrals for a six month period would be costly to the Respondent and that a reasonable charge would be made to Glenn for this. Glenn was angered by this suggestion. He subsequently limited his request to copying the names, addresses, telephone and social security numbers of minority registrants, and he did so. When asked by Gruber if he wanted anything else, Glenn said he did not at that time.

B. Analysis and Concluding Findings.

Glenn's primary dispute with the Respondent, and one of long-standing, is his assertion that he has been unfairly treated in referrals, though he has yet to prevail on this contention in any forum. See, *International Union of Operating Engineers, Local 520, AFL-CIO,* 309 NLRB 1199 (1992), enfd. denied, 15 F.3d 677 (7th Cir. 1994). Such was the thrust of his original charge here. It was investigated and apparently found lacking in substance, since that allegation was deleted from the First and Second Amended Charges and is not in the Complaint.

In the Second Amended Charge, Glenn alleged that the Respondent "since about August 7, 1996, has restrained and coerced employees of various employers in the exercise of rights guaranteed to them in Section 7 of the Act by refusing to allow an employee to review hiring hall records, informing an employee that the Union would charge that employee to review hiring hall records, informing an employee that the employee would need to schedule and (sic.) appointment to see hiring hall records, and refusing to allow an employee to take notes regarding information contained in the Union's hiring hall records." The complaint allegations track this language.

The applicable rule in this area was succinctly stated by Judge Reis in *Local Union No. 513, International Union of Operating Engineers, AFL - CIO,* 308 NLRB 1300 (1992): "An applicant ought to be entitled, as a matter of right, to inspect hiring hall records to determine whether his employment opportunities have been, advertently or otherwise, interfered with." Id. at 1303. ". . . it is enough to establish a right to hiring hall information that the applicant simply wishes to see it." Ibid. No doubt therefore, Glenn had the near absolute right to the information he requested during his several visits to the Respondent's office in August. The issue is whether the credible evidence shows that he was denied his requests. I conclude it does not.

To establish her case, Counsel for the General Counsel relies on the credibility of Glenn. I conclude that he was not a reliable witness and where his testimony is contrary to that

of Gruber and James, Glenn's version should not be accepted. First is Glenn's proclivity for making false statements on charges against the Respondent. This was outlined in judge's decision in *International Union of Operating Engineers, Local 520, AFL-CIO, supra.,* during the trial of which Glenn admitted that certain statements in charges were false. Similarly, in this case, his testimony differed from affidavits he gave to the Board agent. For instance, in two of the three affidavits he stated that "I am a member of" the Union. While this assertion is not material to the ultimate issues here, it demonstrates a lack of reliability for the facts. It was clear from his time on the witness stand that if he was trying to tell the truth, his memory was faulty. His answers seemed tailored to fit his overall analysis of his dispute with the Respondent – that he had been discriminated in referrals, notwithstanding the total lack of evidence of such. For instance, there is no evidence to support his testimony that he felt many of the names on the referral sheets were "forged."

Second, it is simply incredulous that the Respondent's agents, within two weeks of being served with a charge would engage in acts they knew to be unlawful. The General Counsel offered no reason why the Respondent would deny Glenn the information he requested. Finally, there was no corroboration of any of Glenn's testimony on the fact issues in dispute.

Thus, I decline to credit Glenn's testimony that James said on August 7 that he would not show him the information because to do so would infringe on the rights of others. I believe that James did say that he would not give out the telephone numbers until he had checked with his counsel, since many of the members had unlisted numbers. Such was not unreasonable, nor a violation of the Act.

On cross examination, Glenn testified that on August 7 when asked he told James he wanted to see the "referral list" and Gruber took him into the dispatch room and "He told me the names of the people that was ahead of me." Glenn "never tried to copy nothing." Though Glenn maintains that Gruber let him look at the names but kept his thumb over the seniority number on each card, he also testified that the first card Gruber picked out was number 790 with a name Glenn did not recognize.

Gruber denied impairing Glenn's view of the seniority numbers, nor was any rationale offered for why he would do so. I credit Gruber. I conclude that in fact Glenn was shown all the information he requested on August 7, except for the telephone numbers, and the Union's refusal to do so did not infringe on Glenn's rights.

Similarly, on August 15 Glenn asked to see who was ahead of him for referrals and again, according to Glenn, Gruber took him to the dispatch room and read from the cards in the tray. Glenn testified that he could have "strained" to see the cards. It is unclear from Glenn's testimony whether he could seen the cards or not. Glenn did not ask for the daily dispatch referrals. I conclude that Glenn in fact received all the information he requested on August 15.

In his letter of August 9, Glenn requested "the list of all referral for last 6 mo. be made available for my observation and coping. I would like the dates of each minority referral was referred to work on a job with the name of contractor and how long job lasted." In response to this, by letter of August 15 "Local 520, as per your request to make available certain information, will make available for you on August 22, 1996 at 10:00 a.m. Someone in the office to provide you with the said information."

Setting a specific time for Glenn to review the massive information he requested is alleged by the General Counsel to be violative of the Act. No authority was offered in support of

this proposition. Although Glenn had a near unlimited right to inspect records of the referral system, it must also be recognized that in fact the Respondent operates a referral business. Glenn does not necessarily have the unlimited right to dictate the times and circumstances under which he will inspect the records. I find no discernible prejudice to Glenn for the Respondent to have set a specific time within two weeks of his demand for him to review the records. I discredit Glenn's claim that he was told that August 22 would be the only time he could review the hiring hall records.

Though Glenn's testimony was far from reliable, nevertheless he has the right to look and copy information from the Respondent's referral system so that he might determine whether he has been treated fairly. For this purpose, he is entitled to see whatever he wants, particularly since it can not be determined in advance what is or is not relevant. However, since the Respondent is in the business of referring some 1700 individuals, at the rate of about 30 a day, a six month period covers nearly 4000 referral slips. Some rules of procedure in showing this extensive information would scarcely be unreasonable or violative of the Act.

During the preliminary discussions on August 22, counsel for the Respondent stated that compiling the information Glenn requested would be costly and they would access Glenn reasonable costs for production and copying. Glenn objected in very strong terms and in fact the matter was resolved without Glenn being asked to pay any costs.

The fact that reasonable costs were suggested is alleged to have been violative of the Act. Without resolving the extent to which a union may bill costs to one seeking to review referral records, there is no doubt that some "reasonable" costs may be accessed. *International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 197,* 318 NLRB 205 (1995). If in fact a union may access reasonable costs to one seeking copies of referral records, to suggest this as a possibility cannot of itself be violative of the Act. Here an accommodation was reached. Glenn personally copied all the records he wanted on August 22 and he was not charged any costs.

Counsel for the General Counsel argues that the costs which Counsel for the Union stated would be levied were not for production and copying but for the time of the Business Agents. The only evidence of a discussion of costs beyond those reasonable for production and copying is in the testimony of Glenn. Since I do no credit him, I conclude that no unlawful threats relating to costs were made by agents of the Union.

Glenn testified that on August 22, after these preliminary discussions, Counsel for the Union told Gruber "Find out what he wants and give it to him." Glenn told Gruber he wanted a list of all minorities working and non-working. Gruber produced those cards and Glenn copied the information he wanted. Meanwhile, Attorney Gulick was copying onto her personal computer referral record information relating back to January, apparently in connection with the investigation of Glenn's charge of discrimination.

After Glenn had copied the information shown to him by Gruber, Gruber said, "What else do you want to see?"

> A My answer was I would like to see the -- the referrals, daily referrals, from January up to now.

Q Did you not in fact tell Mr. Gruber when he asked you what else you wanted to see that you didn't want to see anything further at this time but that you would be back if you wanted to see anything else?

A Yes, I did say that.

I conclude that the credible evidence is insufficient to support the allegations that Glenn was denied access to referral information he requested. I further conclude that in setting a reasonable time for him to review the records, the Union did not violate the Act. And finally, I conclude that it was not unlawful to state that reasonable costs would be charged for the production and copying the records.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [3]

ORDER

The complaint is dismissed in its entirety.

Dated, Washington, D.C.
July 24, 1997

James L. Rose
Administrative Law Judge

[3]If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.